

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
License No. 21006 and
MERCHANT MARINER'S DOCUMENT
Issued to: Donnie West 415 40 3214

DECISION OF THE COMMANDANT APPEAL
UNITED STATES COAST GUARD

2203

Donnie West

This appeal was taken in accordance with Title 46 United States Code 239b and Title 46 Code of Federal Regulations 5.30-1.

By order dated 5 October 1978, an Administrative Law Judge of the United States Coast Guard at Norfolk, Virginia, after a hearing at Norfolk on the same date, revoked Appellant's license and document upon finding him guilty of conviction for a narcotic drug law violation. The specification found proved alleged that Appellant was convicted on 9 September 1974, in the U. S. District Court for the Eastern District of Virginia, a court of record, of distribution of narcotics, to wit: heroin.

At the hearing Appellant was represented by professional counsel. Appellant entered a plea of guilty to the charge and specification.

The Investigating Officer introduced into evidence two documents.

Appellant offered his own testimony and character evidence consisting of 23 documents.

At the hearing on 5 October 1978, the Administrative Law Judge, entered the order of revocation, after determining on the record that the charge and specification as alleged had been proved. A written decision was served 10 October 1978. Appeal was timely filed 16 October 1978.

FINDINGS OF FACT

Appellant, while the holder of the captioned license and document, was convicted on 9 September 1974 upon his plea of guilty, of the offense of distribution of heroin in violation of Title 21 United States Code section 841(a)(1). The conviction was in the United States District Court for the Eastern District of Virginia.

BASES OF APPEAL

This appeal has been taken from the decision and order of the Administrative Law Judge. It is contended that the underlying statute, 46 U. S. C. §239b is unconstitutional in that it operates to deprive Appellant of his "life, liberty, or property without due process of law" contrary to the Fifth Amendment of the Constitution of the United States.

APPEARANCE: Vandeventer, Black, Meredith & Martin of Norfolk, Virginia, by Carter T. Gunn, Esq.

OPINION

It is unquestioned that it would be improper to revoke licenses and merchant mariner's documents without due process of law. Parker v. Lester, 227 F.2d 708 (9th Cir. 1955). However, it is unnecessary to consider whether the right to continue to hold such documents are a "property right" as contemplated by the Fifth Amendment.

It is sufficient to note that procedural due process was satisfied by providing Appellant with adequate notice and a full hearing pursuant to the requirements of the Administrative Procedure Act, 5 U. S. C. 551 et seq. See Decision on Appeal No. 1898.

Substantive due process is satisfied if the sanction at issue is prescribed by the legislative enactment which is within the scope of legislative authority, and is reasonably related to the purpose of the legislation. Annot., 98 L.Ed. 851, 852(1953). I am satisfied that both these requirements are met by 46 U. S. C. 239b. See 53 CJS Licenses §44 (1948). Thus Appellant's citation of authority is inapposite, as the rule of law established therein has been met by the legislative pronouncement.

Parenthetically, I would note the discussion in Decisions on Appeal Nos. 2135 and 1382, wherein it was demonstrated that an agency charged with administration of an act of Congress lacks the authority to pass upon the constitutionality of that act. See generally Public Utilities Comm. v. U. S., 355 U. S. 534 (1958); Engineers Public Service Co. v. S. E. C., 138 F.2d 936 (1943).

CONCLUSION

As due process was properly accorded Appellant, his contention on appeal is rejected.

ORDER

The order of the Administrative Law Judge, dated at Norfolk, Virginia, on 5 October 1978, is AFFIRMED.

J. B. HAYES
Admiral, U. S. Coast Guard
Commandant

Signed in Washington, D. C., this 6th day of May 1980.

INDEX

Drugs

Mandatory Revocation, upon conviction of violation

Due Process

Not denied by mandatory revocation

Revocation

Due process, upon conviction of drug violation